

AMENDED IN ASSEMBLY JUNE 26, 2009

AMENDED IN SENATE MAY 13, 2009

**SENATE BILL**

**No. 219**

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**Introduced by Senator Yee**  
(Coauthor: Assembly Member Portantino)

February 23, 2009

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An act to amend Section 8547.10 of the Government Code, relating to improper governmental activities.

LEGISLATIVE COUNSEL'S DIGEST

SB 219, as amended, Yee. Disclosure of improper governmental activities: University of California: damages.

Existing law, the California Whistleblower Protection Act, authorizes a University of California employee or applicant for employment to have an available action for damages caused by intentional acts of reprisal, retaliation, threats, or coercion only if the university failed to reach a decision regarding a complaint filed with a specified university officer by the injured party within the time limits established for that purpose by the Regents of the University of California.

This bill would also authorize an available action for damages if the university reached a decision regarding the complaint filed with the specified university officer *and state that these provisions are not intended to prohibit an injured party from seeking a remedy if the university has not satisfactorily addressed the complaint within 18 months.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 8547.10 of the Government Code is  
2 amended to read:

3     8547.10. (a) A University of California employee, including  
4 an officer or faculty member, or applicant for employment may  
5 file a written complaint with his or her supervisor or manager, or  
6 with any other university officer designated for that purpose by  
7 the regents, alleging actual or attempted acts of reprisal, retaliation,  
8 threats, coercion, or similar improper acts for having made a  
9 protected disclosure, together with a sworn statement that the  
10 contents of the written complaint are true, or are believed by the  
11 affiant to be true, under penalty of perjury. The complaint shall be  
12 filed within 12 months of the most recent act of reprisal complained  
13 about.

14     (b) Any person who intentionally engages in acts of reprisal,  
15 retaliation, threats, coercion, or similar acts against a University  
16 of California employee, including an officer or faculty member,  
17 or applicant for employment for having made a protected  
18 disclosure, is subject to a fine not to exceed ten thousand dollars  
19 (\$10,000) and imprisonment in the county jail for up to a period  
20 of one year. Any university employee, including an officer or  
21 faculty member, who intentionally engages in that conduct shall  
22 also be subject to discipline by the university.

23     (c) In addition to all other penalties provided by law, any person  
24 who intentionally engages in acts of reprisal, retaliation, threats,  
25 coercion, or similar acts against a university employee, including  
26 an officer or faculty member, or applicant for employment for  
27 having made a protected disclosure shall be liable in an action for  
28 damages brought against him or her by the injured party. Punitive  
29 damages may be awarded by the court where the acts of the  
30 offending party are proven to be malicious. Where liability has  
31 been established, the injured party shall also be entitled to  
32 reasonable attorney's fees as provided by law. An action for  
33 damages shall ~~only~~ be available to the injured party *only* if the  
34 injured party has first filed a complaint with the university officer  
35 identified pursuant to subdivision (a), and the university has either  
36 reached a decision regarding the complaint, or failed, within the  
37 time limits established by the regents, to reach a decision regarding  
38 the complaint. *Nothing in this section is intended to prohibit the*

1 *injured party from seeking a remedy if the university has not*  
2 *satisfactorily addressed the complaint within 18 months.*

3 (d) This section is not intended to prevent a manager or  
4 supervisor from taking, directing others to take, recommending,  
5 or approving any personnel action or from taking or failing to take  
6 a personnel action with respect to any university employee,  
7 including an officer or faculty member, or applicant for  
8 employment if the manager or supervisor reasonably believes any  
9 action or inaction is justified on the basis of evidence separate and  
10 apart from the fact that the person has made a protected disclosure.

11 (e) In any civil action or administrative proceeding, once it has  
12 been demonstrated by a preponderance of the evidence that an  
13 activity protected by this article was a contributing factor in the  
14 alleged retaliation against a former, current, or prospective  
15 employee, the burden of proof shall be on the supervisor, manager,  
16 or appointing power to demonstrate by clear and convincing  
17 evidence that the alleged action would have occurred for legitimate,  
18 independent reasons even if the employee had not engaged in  
19 protected disclosures or refused an illegal order. If the supervisor,  
20 manager, or appointing power fails to meet this burden of proof  
21 in an adverse action against the employee in any administrative  
22 review, challenge, or adjudication in which retaliation has been  
23 demonstrated to be a contributing factor, the employee shall have  
24 a complete affirmative defense in the adverse action.

25 (f) Nothing in this article shall be deemed to diminish the rights,  
26 privileges, or remedies of any employee under any other federal  
27 or state law or under any employment contract or collective  
28 bargaining agreement.